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6-8-04
JC
Serial No. 09/895,878

Docket No.: 1293.1222

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Byung-in MA et al.

Serial No. 09/895,878

Group Art Unit: 2615

Confirmation No. 5378

Filed: July 2, 2001

Examiner: Thang V. Tran

For: APPARATUS FOR AND METHOD OF DETECTING DEFOCUS ERROR SIGNAL FOR
OPTICAL PICKUP AND APPARATUS FOR AND METHOD OF DETECTING SEEK
DIRECTION

RESPONSE TO RESTRICTION REQUIREMENT

RECEIVED

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

JUN 07 2004
Technology Center 2600

Sir:

This is responsive to the Office Action mailed May 3, 2004, having a shortened period for response set to expire on June 3, 2004, the following remarks are provided.

I. Provisional Election of Claims Pursuant to 37 CFR §1.142

Applicants provisionally elect "species a" in response to the preliminary restriction requirement set forth in the Office Action. Applicants identify claims 1-5 as reading on the "species a."

II. Applicants Traverse the Requirement

The Examiner asserts that no claim is considered generic. Applicants submit that upon closer inspection, the Examiner will find that claims 11 and 19 are generic to both species.

Insofar as "species b" is concerned, it is believed that claims 6-29 are so closely related to elected claims 1-5 that claims 6-29 should remain in the same application.

There have been no references cited to show any necessity for requiring restriction and, in fact, it is believed that the Examiner would find references relating to both "species a" and "species b" in the same field of technology. The Examiner has not identified different

classifications for "species a" and "species b."

It is believed, moreover, that evaluation of both sets of claims would not provide an undue burden upon the Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter recited by the "species b" claims by filing a divisional application.

MPEP §803(B) indicates that there must be a serious burden on the Examiner if restriction is required (see MPEP §803.02, §806.04(a)- §806.04(i), §808.01(a) and §808.02). The Examiner has not set forth why there would be a serious burden if restriction is not required.

Even if the Examiner considers claims 6-29 to be drawn to a patentably distinct species of the claimed invention, the Applicants respectfully request the Examiner to consider claims 1-29 together.

III. Conclusion

When all of the other various facts are taken into consideration, it is believed that upon reconsideration of the Examiner's initial restriction requirement, all of the pending claims should be examined in the subject application.

In view of the foregoing amendments, arguments and remarks, all claims are deemed to be allowable and this application is believed to be in condition for allowance.

If any further fees are required in connection with the filing of this Amendment, please charge the same to our deposit account number 19-3935.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 6/3/04

By: John H. Stowe
John H. Stowe
Registration No. 32,863

1201 New York Ave, N.W., Ste. 700
Washington, D.C. 20005
Telephone: (202) 434-1500
Facsimile: (202) 434-1501